



Office of Dispute Resolution

FY 2011 Performance Budget

Congressional Submission

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I. Overview for Office of Dispute Resolution

In FY 2011, the Office of Dispute Resolution (ODR) requests a total of \$835,000 3 positions, and 3 FTE to meet its mission. The requested amount is \$33,000 more than what was requested in FY 2010.

Electronic copies of the Department of Justice's Congressional Budget Justifications, Capital Asset Plan, and Business Case exhibits can be viewed or downloaded from the internet using the following internet address: <http://www.usdoj.gov/jmd/2011justification/>.

A. Mission

ODR's mission is to promote and facilitate the broad and effective use of alternative dispute resolution processes by the Department of Justice and throughout the Executive Branch of the Federal Government.

In addition, ODR's mission also requires collecting and providing information necessary to optimize the effective use of alternative dispute resolution techniques. ODR uses the information it collects to analyze how the Department uses alternative dispute resolution techniques. After each analysis, ODR makes determinations regarding the Department's use of ADR and responds to the training needs of Department Attorneys, who are customarily engaged in adversarial proceedings.

B. Background

"Alternative dispute resolution" (ADR) is an umbrella term for techniques that employ the services of a third-party neutral to assist in the resolution of disputes. ADR includes mediation, arbitration, early neutral evaluation, and other techniques.

On April 6, 1995, Attorney General Order 1160.1, was issued promoting a broader use of ADR in appropriate cases for more effective resolution of disputes involving the government. In addition, this Order created an office responsible for promoting Alternative Dispute Resolution (ADR) at the Department of Justice, the Office of Dispute Resolution (ODR).

From 1996-1998, several significant pieces of legislation and executive orders emphasized the importance of ADR in the Federal Government. In 1996, Congress passed the Administrative Dispute Resolution Act of 1996. This Act recognized that ADR policies could assist federal agencies to operate in a more effective and efficient manner. Moreover, this Act required federal agencies to adopt ADR policies that encourage the use of ADR in resolving the many disputes which they routinely encounter. In 1998, Congress passed legislation requiring the federal district courts to make ADR processes available to parties for civil cases.

On May 1, 1998, a Presidential Memorandum was issued to the Heads of all Executive Departments creating the Interagency Steering Committee and designating the Attorney General as its leader. The purpose of the Steering Committee is to assist federal agencies in implementing programs promoting the effective use of alternative dispute resolution. Today, the Office of

Dispute Resolution represents the Department on the Steering Committee. As part of this representation, ODR provides regular detailed reports on the progress of ADR and the Department's efforts to the Attorney General for submission to the President. A copy of the latest report can be found online at http://www.adr.gov/president_reports.html.

There will always, of course, be cases involving issues of policy, or issues that require precedential guidance in interpreting a statute or regulation, where settlement or ADR will not be appropriate. In many cases, however, Department attorneys can resolve cases without undermining important legal issues, jurisdictional defenses, or policy interests. Often they are able to negotiate settlement through one-on-one negotiations with opposing counsel. There are also a considerable number of cases where such settlement discussions turn unproductive, protracted, or highly positional. The uses of alternative dispute resolution (ADR), particularly mediation, in such cases promote strategic settlements which are in the best interests of the government. Mediation provides a setting in which, with the aid of an experienced neutral, the litigants can refine their risk assessments, make fully informed judgments on potential settlements, and construct creative resolutions.

C. The Structure and Objectives of ODR

Strategic Goal II: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People

Objective: Strategic Goal Two, Objective 2.7 - Vigorously enforce and represent the interests of the United States in all matters for which the Department has jurisdiction.

ODR's mission concentrates on promoting and facilitating ADR. As the largest user of the federal court system, the Department employs over ten thousand (10,000) attorneys and represents virtually all of the executive branch agencies. Of the tens of thousands of civil actions filed each year involving the United States, only a small percent actually go to trial; the vast majority of cases are settled. When direct negotiations between parties are unproductive, ODR offers assistance in the use of a third party neutral to assist in negotiating a settlement mutually agreeable to the parties. A reasonable settlement provides a cost effective and efficient way for the government to save the attorney/staff time, government expenses associated with the protracted discovery or full blown litigation. ODR performs a variety of functions to effectively accomplish its mission.

1. Promoting, Facilitating, and Evaluating the Use of ADR

a. Training of Attorneys in Effective ADR Techniques

Training Department attorneys, including Assistant United States Attorneys (AUSA's) throughout the country, as well as agency counsel, is an integral party of ODR's mission of promoting the effective use of ADR. ODR receives requests from Department attorneys, United States Attorney's offices (USAO's), and federal agencies nationwide for training in the effective

use of ADR, particularly negotiation and mediation techniques. ODR trains Department attorneys and client agencies on how to utilize ADR effectively and provides advice and counseling on the appropriate use of ADR. After training sessions, ODR evaluates the impact of training on the trends of ADR usage. Department litigating attorneys and Assistant United States Attorneys are provided with the skills, advice, and counseling on how to use ADR in an effective manner. Thus, the training provided by ODR promotes the effective use of ADR in appropriate cases, which translates into measurable benefits (both cost saving and time saving) to the Department.

b. Funding the Use of Neutrals in Department Litigation

ODR administers the ADR portion of the Fees and Expenses of Witnesses (FEW) apportionment by Congress. ODR's staff processes all ADR funding requests from every civil litigating component in the Department including all of the USAO's. The processing of these requests requires a thorough review of each request, an approval process, as well as the tracking and analysis of every case funded by ODR with the FEW apportionment.

As federal litigation increases, so have funding requests and the requirements relating to measuring the effectiveness and success of the ADR funded. In response, ODR developed and implemented information technology systems to monitor and tabulate funding requests. These systems also assist ODR with the collection and analysis of data which provides ODR with the tools necessary to evaluate the effectiveness of ADR programs. These systems allow ODR to calculate and measure the benefits of ADR use in the Department, and ensure that each case processed by ODR for ADR funding is closely tracked and analyzed. As a result of ODR's efforts to promote and assist in Departmental ADR usage, tremendous benefits are realized by the Department both in cost savings and time savings, permitting the attorneys to effectively redirect their efforts to cases which should not, or could not, settle.

c. Evaluating the Benefits of ADR to the Department

ODR evaluates and measures the advantages of ADR use by the Department. The primary source of data is the evaluation form completed by the Department attorneys who used ADR in one of their cases. ODR identifies, captures, and then analyzes data collected from hundreds of reports submitted by Department attorneys, including: type of case; issues involved; type of ADR process utilized; rate of success; whether the use of ADR was court ordered or voluntary; estimate of expenses and time anticipated for trial; and identifying information about the case, parties, attorneys, and neutral involved. ODR is constantly challenged in obtaining 100 percent compliance in reporting as well as in obtaining more thorough reports, with limited resources. However, ODR has made significant progress in identifying, capturing, and analyzing data and continues to improve and implement changes to the methods for data collection and retention, including designing, developing, and implementing a permanent database that renders data in easily retrievable and specific formats.

2. Representing Leadership on Federal ADR

a. The Interagency ADR Steering Committee

Pursuant to the Administrative Dispute Resolution Act of 1996 and the Presidential Directive of May 1, 1998, the Attorney General is the head of federal ADR, and is responsible for facilitating and encouraging the use of alternate dispute resolution by agencies throughout the Executive Branch of the Federal Government. In discharging this responsibility, ODR represents the Attorney General on the federal Interagency ADR Steering Committee. The Steering Committee members include senior ADR professionals representing all of the Cabinet departments and many of the independent agencies. They are responsible for facilitating and encouraging agency use of ADR in their respective jurisdictions. Their accomplishments in doing so contribute to the goals, efficiency, and productivity of the Federal Government and its agencies. ADR provides an efficient and cost-effective way to manage the government's business and maximize its resources. ADR furthers the primary goal of good government by permitting our clients, the executive branch federal agencies, to redirect their focus and commitment to their core functions, rather than depleting their resources in protracted and time consuming legal battles.

ODR leads the work of the Interagency Steering Committee. ODR also provides substantive and technical assistance to the other federal agencies in conflict management system design, early case assessment, mediator selection, or other uses of ADR where requested or appropriate.

b. Report to the President on the Use of Benefits of ADR

In June 2005, ODR inaugurated, and lead the Interagency ADR Steering Committee project to research and prepare an updated report on the state of federal ADR for the Attorney General to submit to the President. All federal agencies in the Executive Branch were asked to submit information about their ADR programs and policies, goals and targets, performance achievements, and challenges. ODR organized and analyzed this information from approximately one hundred (100) federal agencies. ODR's findings were used to create a two hundred (200) page exhaustive report detailing ADR programs throughout the Federal Government. The report was submitted by the Attorney General to the President on April 11, 2007.

c. Interagency ADR Working Group Website

Another significant contribution to federal agencies is ODR's development, design, and maintenance of the Interagency Alternative Dispute Resolution Working Group Website (<http://www.adr.gov>) by ODR. The website has four main substantive areas: workplace employment, contracts and procurement, enforcement and regulation, and claims against the government. This website promotes ADR by making resources and online tools available to government agencies as well educating the general public about federal ADR programs.

d. Represent the Department with Foreign Governments and the Private Sector

ODR represents the Department before foreign delegations and private legal, business, and other constituencies on federal ADR matters or use of ADR throughout the Federal Government. In FY 2007, ODR met with twenty-eight (28) foreign nationals from twenty-five (25) different

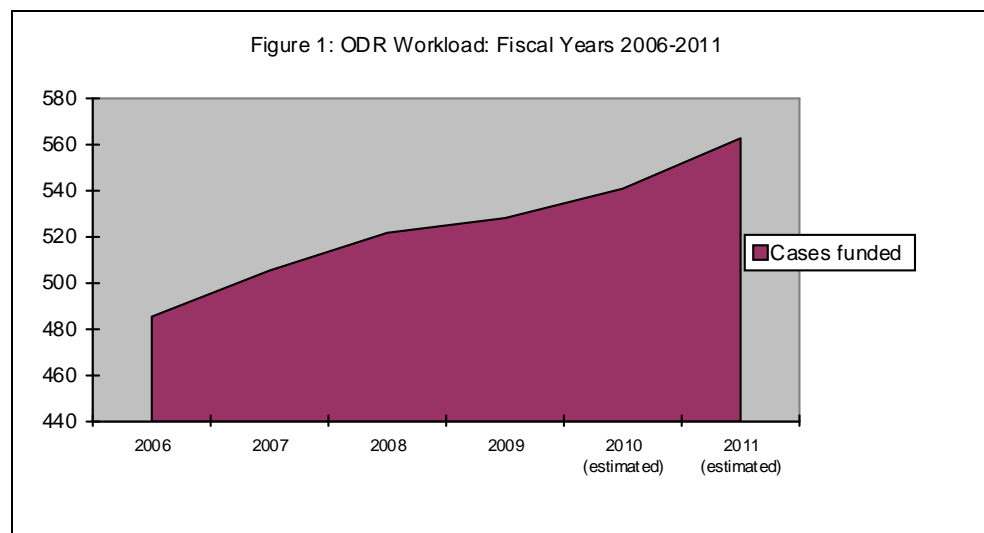
countries throughout Asia, Africa and Europe. In FY 2008, ODR met with twenty-two (22) foreign nationals from twenty-two (22) different countries. In FY 2009, ODR met with thirty-seven (37) foreign nationals from three (3) different countries.

Internal Challenges

ODR's challenges are of an internal and external nature in regard to fulfilling its mission, which is to promote and facilitate the use of ADR throughout the Department of Justice as well as the federal government.

ODR approves ADR funding requests from the entire Department from ADR portion of the Fees and Expenses of Witnesses (FEW) Appropriation that it administers. This translates into the processing, accounting, and monitoring of hundreds of funding requests each fiscal year by the ODR staff for all of the civil litigating components in the Department of Justice, including the 94 districts throughout the United States and its territories.

The increasing workload of ODR is evidenced by the growing number of cases each fiscal year that ODR approves for ADR funding from ADR portion of the Fees and Expenses of Witnesses (FEW) Appropriation that it administers (See, Figure 1). In FY 2006, ODR funded 485 requests. In fiscal year 2007, ODR funded 505 requests. In fiscal year 2008, ODR funded 522 requests. In FY 2009, ODR funded 528 requests. By the end of the first quarter in FY 2010, ODR had already funded 139 new cases. In keeping with this growth trend, ODR estimates funding a total of 541 cases in FY 2010 and a total of 563 cases in FY 2011.



In addition, ODR identifies, captures, and analyzes benefits of ADR to the Department. ODR obtains evaluations from Department attorneys once the ADR process is complete. This presents a unique challenge to ODR because it requires information technology resources to tabulate and report funding requests and which possess adequate storage and retrieval capabilities.

Furthermore, these resources must be able to provide a means of tracking, collecting, and updating data for statistical analysis in a manner which is not only easily accessible, but versatile enough to keep up with the growth of ADR in the Department.

ODR pursues 100% compliance in attorney reporting on the results of ADR usage. This complete picture of ADR usage permits ODR to study the most successful application of ADR processes, including types of cases as well as the most effective timing of ADR, in order to promote the most the strategic use of ADR in representing the best interests of the government.

ODR provides trainings for Department attorneys, AUSA's, and federal agencies on the effective use of ADR. Department attorneys from the litigating components and United States Attorneys offices nationwide have asked the Office of Dispute Resolution to provide training on the effective use of ADR in defensive litigation as well as Affirmative Civil Enforcement ("ACE") Litigation. ODR is unique to the Department because the resources which are dedicated to ODR prove to have major cost saving benefits to the Department. This is because the use of ADR enables litigating components to reallocate resources that would otherwise be spent on litigation. Therefore, not only does the increase provide vital resources needed by ODR, but it also provides the other general litigating activities (GLA) components in the Department with a cost saving means for their own litigation budgets.

External Challenges

There are two external challenges facing ODR. First, ODR must meet the needs and demands regarding ADR processes for all Department attorneys nationwide, as well as for the federal agencies. Since there is a tremendous variety of cases involving the government, ODR must tailor the use and application of ADR to meet the breadth of cases in the Department. In training Department attorneys, the basic course in negotiation and mediation has relevance for all of the attorneys in all of the Districts and components. However, ODR needs to develop more advanced training to address the use of ADR in a more tailored fashion depending upon the particular type of case, such as the affirmative civil enforcement cases involving health care fraud. Second, there exists still, in some jurisdictions, a litigation culture which distrusts or minimizes the value of ADR despite the well-documented savings for the government. In all too many cases, settlement in these jurisdictions is occurring "on the courthouse steps," too late in the game for serious cost savings in terms of preparation for trial, and not strategically as advantageous to the government as it could have been with more advanced planning and foresight. While there may be instances when such last minute settlements are necessary, the earlier strategic and calculated use of ADR generally provides more leverage for the government as it saves more resources. Further training in ADR for the Department attorneys in both the components as well as the various United States Attorney Offices would significantly reduce these challenges.

II. Summary of Program Changes

Not applicable for this submission.

III. Appropriations Language and Analysis of Appropriations Language

Appropriations Language

Refer to the General Legal Activities Appropriation Exhibit.

IV. Decision Unit Justification

A. Office of Dispute Resolution

<i>Office of Dispute Resolution</i> TOTAL	Perm. Pos.	FTE	Amount
2009 Enacted with Rescissions	3	3	574
2009 Supplementals			
2009 Enacted w/Rescissions and Supplementals	3	3	574
2010 President's Budget	3	3	802
Adjustments to Base and Technical Adjustments	0	0	34
2011 Current Services	3	3	836
2011 Program Increases	0	0	0
2011 Program Offsets	0	0	(1)
2011 Request	3	3	835
Total Change 2010-2011	0	0	33

1. Program Description

The major function of the Office of Dispute Resolution (ODR) is to promote and facilitate the broad and effective use of alternative dispute resolution (ADR) processes by the Department of Justice and throughout the Executive Branch of the Federal Government.

The Office of Dispute Resolution promotes and evaluates the use of ADR at the Department; represents the Attorney General in leadership of federal ADR; represents the Department leadership with foreign governments and the private sector; and facilitates the effective use of ADR in litigation and other agency disputes.

Pursuant to a reprogramming in June 1998, the Senior Counsel was moved from the Office of the Associate Attorney General and established as a separate and office, which now reports to the Associate Attorney General. By the direction of Congress, operational funding is derived from the General Legal Activities appropriation.

PERFORMANCE AND RESOURCES TABLE

Decision Unit: Office of Dispute Resolution

DOJ Strategic Goal/Objective:

WORKLOAD/ RESOURCES		Final Target		Actual		Projected		Changes		FY 2011 Program Offset		Requested (Total)	
		FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Offset		FY 2011 Request	
Workload													
Number of cases authorized for funding of professional neutrals		164		528		164		164		164		164	
Number of trainings to facilitate the effective use of ADR		10		1		10		10		10		10	
Total Costs and FTE (reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		3	574	2	390	\$3	802		34		-1	\$3	835
TYPE/ STRATEGIC OBJECTIVE	PERFORMANCE	FY 2009		FY 2009		FY 2010 Enacted		Current Services Adjustments and FY 2011 Program Changes		FY 2011 Offset		FY 2011 Request	
Program Activity		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		3	574	2	390	3	802	0	34	0	-1	3	835
OUTCOME	Percentage of cases resolved using voluntary ADR		60%		78%		60%		60%				60%
	Percentage of cases resolved using court-ordered ADR		25%		42%		25%		25%				25%
	Number of briefings held for foreign delegations on the use and benefits of ADR		3		3		3						3

Data Definition, Validation, Verification, and Limitations: Use this section to discuss data terms, data sources, how the information is collected, how the information is verified, and data limitations to include how well the indicator measures performance in this area.

Program Activity Data Definition, Validation, Verification, and Limitations:

Workload Measures:

ODR funds and assists in the use of professional neutrals in appropriate Department civil cases. The success of the office is measured by the number of cases for which ODR (or the Executive Office for United States Attorneys pursuant to delegated authority from ODR) authorized funding of professional neutrals. The sources of data collection for tabulating the number of cases using ADR funding are the requests for funding authorization submitted by the components to ODR and the disposition of those requests by ODR, and the requests for funding from United States Attorney's offices which are authorized by the Executive Office for United States Attorneys pursuant to authority delegated by ODR. ODR and the Executive Office for United States Attorneys are responsible for tracking the requests for funding authorization which they receive and the disposition of those requests. Also, ODR and the Executive Office for United States Attorneys are responsible for ensuring compliance with their procedures for maintaining the integrity of their data collections systems.

ODR provides trainings for Department or other federal attorneys on the effective use of ADR. The source of data collection for tabulating the number of trainings conducted is the records of ODR. ODR is responsible for tracking the trainings it conducts and is responsible for ensuring compliance with its procedures for maintaining the integrity of its data collection system.

Outcome Measures:

ODR measures the percentage of cases resolved through ADR in two distinct instances: *voluntary use* and *court-ordered use*.

For *voluntary use*, the primary source of data collection for tabulating the Department's use of ADR is component reporting. The primary source of case outcomes is attorney evaluations. Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to ODR. ODR gathers outcome information from attorneys. The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.

For *court-ordered use* ADR the primary source of data collection for tabulating the Department's use of ADR is component reporting. The primary source of case outcomes is attorney evaluations. Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to ODR. ODR gathers outcome information from attorneys. The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.

PERFORMANCE MEASURE TABLE

Decision Unit:

Performance Report and Performance Plan Targets		FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY2008	FY 2009		FY 2010	FY 2011
		Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target	Target
OUTCOME Measure	Percentage of cases resolved using voluntary ADR	63%	60%	64%	79%	72%	79.0%	60.0%	78%	60%	60%
	Percentage of cases resolved using court-ordered ADR	N/A	N/A	N/A	59%	60%	51.0%	25.0%	42%	25%	25%

N/A = Data unavailable

* Denotes inclusion in the DOJ Annual Performance Plan

3. Performance, Resources, and Strategies

Strategic Goal II: Prevent Crime, Enforce Federal Laws, and Represent the Rights and Interests of the American People

Objective: Strategic Goal Two, Objective 2.7 - Vigorously enforce and represent the interests of the United States in all matters for which the Department has jurisdiction.

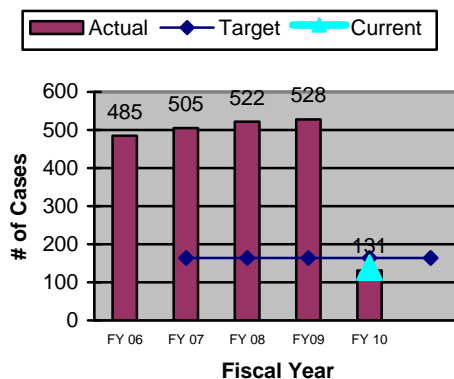
3.1 Workload Measure 1: Number of cases authorized for funding of professional neutrals

a. Performance Plan and Report for Outcomes

In support of its goal to promote the use of ADR at the Department, ODR funds the use of professional neutrals in appropriate Department cases. The areas and scope of ADR funding are necessarily broad in order to cover the wide variety of civil cases involving the United States, including:

- Civil Division use of ADR in aviation and admiralty defenses, medical malpractice, class action discrimination, workplace discrimination litigation, and some health care and consumer fraud enforcement;
- Tax Division civil litigation;
- A vast array of civil matters handled in United States Attorney's offices nationwide;
- The Community Misdemeanor Mediation Project within the Misdemeanor Section of the United States Attorneys' Office for the District of Columbia;
- Civil Rights Division cases involving housing, employment, education, and other types of discrimination claims;
- Environment and Natural Resources Division litigation in water rights disputes and Native American land disputes.

Figure 2: Number of ADR Funded Cases



Data Collection and Storage: The sources of data collection for tabulating the number of cases authorized for funding of professional neutrals are the requests for funding authorization submitted by the components to the Office of Dispute Resolution and the disposition of those requests by the Office of Dispute Resolution, and the requests for funding from U.S. Attorney's offices, some of which are authorized by the Executive Office for U.S. Attorneys pursuant to authority delegated by the Office of Dispute Resolution.

Data Validation and Verification: The Office of Dispute Resolution and the Executive Office for U.S. Attorneys are responsible for tracking the requests for funding authorization they receive and their disposition of those requests.

Data Limitations: The Office of Dispute Resolution and the Executive Office for U.S. Attorneys are responsible for ensuring compliance with their procedures for maintaining the integrity of their data collection systems.

In FY 2006, ODR funded the use of professional neutrals in 485 cases for a total of \$922,781. In FY 2007, ODR funded the use of professional neutrals in 505 for a total of \$883,639. In FY 2008, ODR funded the use of professional neutrals in 522 cases for a total of \$1,264,840. In FY 2009, ODR funded 422 cases for a total of \$1,159,109. Furthermore, by the end of first quarter in FY 2010, ODR funded 131 cases for a total of \$244,435.00.

Discussion: The number of cases funded fluctuates from year to year since the number of civil lawsuits filed which involve the Federal Government fluctuates. Additionally, there are fluctuations which are more case specific such as the type of case, the particular District Court involved and whether it mandates mediation participation, the appropriateness of ADR for resolving the issues in individual cases as well as the willingness of DOJ clients and opposing counsel to settle a particular case. ODR's future targets are based on past funding, but that is necessarily an imprecise and uncontrollable goal.

The figures are based on requests for authorizations for funding submitted by the components to ODR.

FY 2006 Performance Actual: 485

FY 2007 Performance Actual: 505

FY 2008 Performance Actual: 522

FY 2009 Performance Actual: 528

FY 2010 Performance Target: 164

FY 2010 Performance Current (as of 12/31/2009): 131

FY 2011 Performance Target: 164

b. Strategies to Accomplish Outcomes for 2010/2011:

ODR will continue aiming for a high number of cases authorized for funding of professional neutrals, but recognizes that despite fluctuations, use of ADR will continue to bring significant savings and benefits to the Department and the United States Government.

3.2 Workload Measure 2: Number of trainings to facilitate the use of ADR

a. Performance Plan & Reported Outcomes

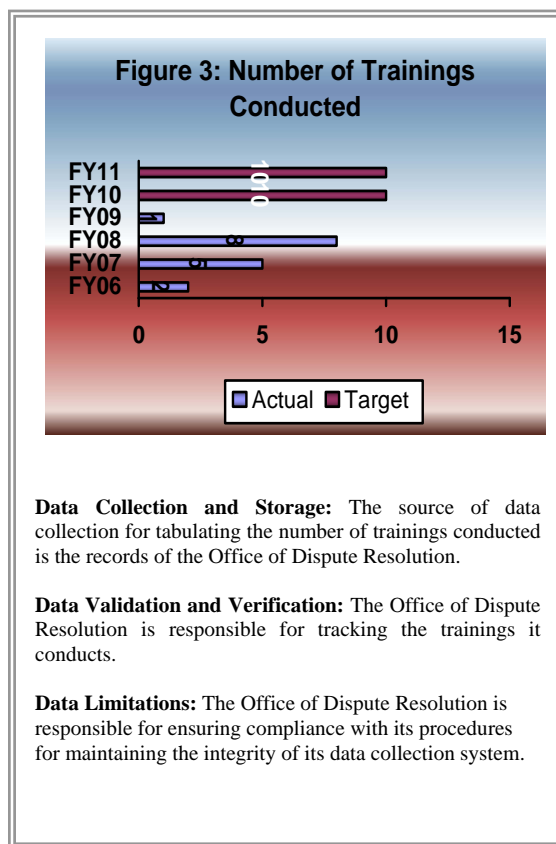
In support of its goal to facilitate the effective use of ADR in litigation and other agency disputes, ODR provides training and education for Department or other federal attorneys as needed on the effective use of ADR.

- In FY 2006, ODR conducted two trainings on obtaining ADR services, and benefits of ADR, for environmental enforcement cases.
- In FY 2007, ODR conducted five basic trainings on the use of ADR for Department attorneys.
- In FY 2008, ODR conducted eight basic trainings on the use of ADR for Department attorneys.
- In FY 2009, ODR conducted one basic training on the use of ADR for Department attorneys.

Discussion: The number of trainings fluctuates from year to year. This is because the number of trainings which Department components or federal agencies need and request depends on factors that vary, e.g., number of new attorneys hired who need training, number of subject-specific needs that arise in Department components and federal agencies because of caseload or particular types of cases being handled, and the ability of Department and ODR to dedicate time for training.

In FY 2006 and 2007, trainings were conducted only once per year at the National Advocacy Institute (NAI), the legal education branch of Executive Office of the United States Attorney (EOUSA), in the areas of negotiation and mediation. The course provided basic training for approximately forty (40) Department of Justice (DOJ) attorneys, generally split between attorneys for the litigating components and Assistant United States Attorneys. Beginning in FY 2008, this training will be offered at least twice per year, due to an extremely enthusiastic response to the course which resulted in twice the number of applicants than can be accommodated. Each interactive course can still only accommodate up to forty (40) students, however.

During FY 2007, a number of United States Attorney's offices, which could send only one (1) attorney, at the most, each year to the course, asked for training to be conducted at their own offices in basic ADR techniques. ODR provided training for the entire civil division of the United States Attorney's Office in the District of Columbia (approximately forty (40) attorneys) and will be providing training to the entire civil division of the United States Attorney's Office in the Southern District of New York in October, 2007. At these trainings, the attorneys are able to ask questions and receive guidance with regard to particular issues in the cases they are currently working, on as well as focus on techniques particularly applicable to the requirements of the District Court in their jurisdiction.



It is difficult to directly gauge the impact of training at NAC as it relates to increased requests for use of ADR funds. There is no control, of course, over the variety of cases brought in each District. Obviously, not every case is appropriate for ADR. The purpose of the training is not only to help the attorneys apply relevant techniques in the ADR processes, but even more importantly, to identify and assess each case as to whether or not ADR might be helpful in advantageously settling the case for the government. However, it is clear that there has been a distinct increase in requests for funding during the same time that the training has been stepped up. For example, in FY 2007 ODR recorded a five (5) percent increase in funding by the end of the fiscal year.

FY 2006 Performance Actual: 2

FY 2007 Performance Actual: 5

FY 2008 Performance Actual: 8

FY 2009 Performance Actual: 1

FY 2010 Performance Target: 10

FY 2011 Performance Target: 10

b. Strategies to Accomplish Outcomes

Strategies to Achieve FY 2010/2011 Goal: ODR will continue aiming for a high number of trainings, but recognizes that despite fluctuations, training in ADR will continue to promote its effective use in the Department and other federal agencies.

3.3 Outcome Measure 1: Percentage of cases resolved using voluntary ADR

a. Performance Plan & Reported Outcomes

In support of its goal to evaluate the use of ADR at the Department, ODR has evaluated the use, cost-effectiveness and results of ODR-funded ADR at the Department. In FY 2006, ODR developed two outcome measures: one measuring the percentage of cases resolved using *voluntary* ADR, and the other measuring the percentage of cases resolved using *court-ordered* ADR.

- In FY 2006, the percentage of cases resolved using *voluntary* ADR is 79%.
- In FY 2007, the percentage of cases resolved using *voluntary* ADR was 72%
- In FY 2008, the percentage of cases resolved using *voluntary* ADR was 79%
- In FY 2009, the percentage of cases resolved using *voluntary* ADR was 78%

Discussion: The resolution rates fluctuate from year to year, and data cannot definitively explain the fluctuations since each case is factually unique and the resolution rate of ADR in Department cases depends on factors that are inherently unpredictable and uncontrollable, e.g., number and types of affirmative and defensive cases, number and types of cases ordered into ADR by the courts, appropriateness of individual cases for ADR, likelihood that individual cases may/may not be settled, and ability and willingness of DOJ clients and opposing counsel to settle a case. ODR's future targets are based on success in meeting past targets, but that is necessarily an imprecise and uncontrollable goal.

FY 2006 Performance Actual: 79%

FY 2007 Performance Actual: 72%

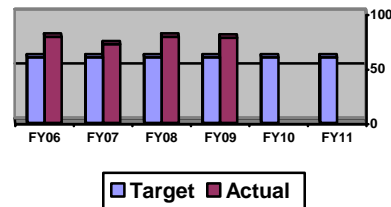
FY 2008 Performance Actual: 79%

FY 2009 Performance Actual: 78%

FY 2010 Performance Target: 60%

FY 2011 Performance Target: 60%

Figure 4: Percentage of Voluntary Cases Resolved by Fiscal Year



Data Collection and Storage: The primary source of data collection for tabulating the Department's use of ADR is component reporting. The primary source of case outcomes is attorney evaluations.

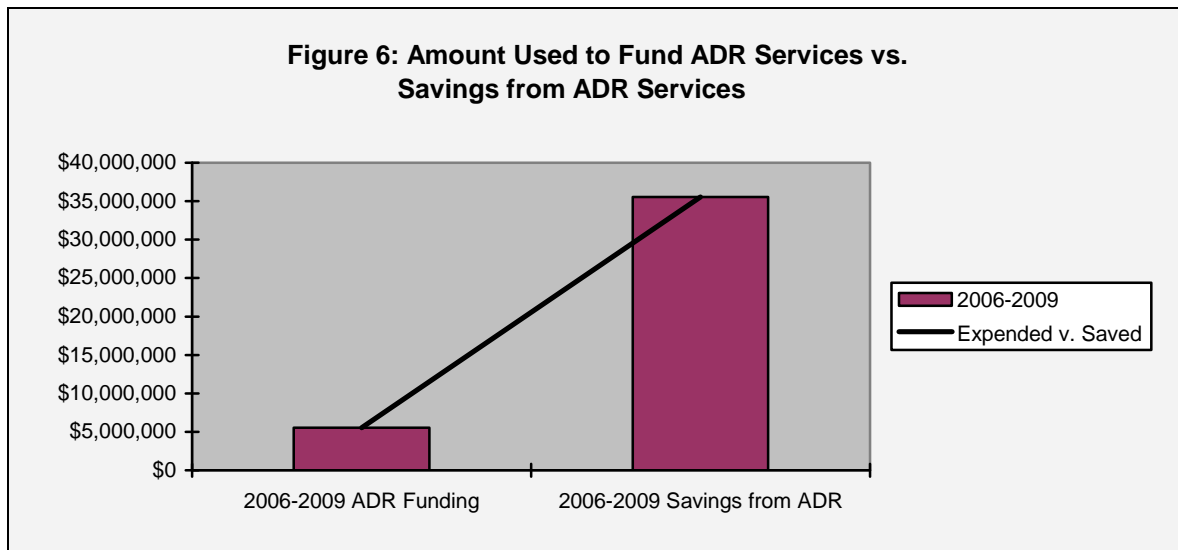
Data Validation and Verification: Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to the Office of Dispute Resolution. The Office of Dispute Resolution gathers outcome information from attorneys.

Data Limitations: The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.

The figures are based on evaluations by attorneys in individual cases which were funded by ODR. The data from the evaluations shows that DOJ continues to realize significant benefits in both time saved and money saved through use of ADR. For example, from FY 2006 to FY 2008, Department attorneys estimated a total savings of \$29,620,397.00 in litigation and/or discovery costs (See, Figure 6). In addition, Department attorneys reported an estimated 84,854 hours of attorney and staff time were saved through use of ADR processes, representing the work of approximately 41 full time positions, as illustrated in Figure 5 below. Moreover, Department attorneys reported 2,444 months were saved in litigation and/or discovery time because they participated in ADR.

Figure 5: Reported Number of Work Hours Saved By Use of ADR

- 2006 (39,467 hrs) saved = work of **19** full time yearly employees
- 2007 (22,377 hrs) saved = work of **11** full time yearly employees
- 2008 (23,010 hrs) saved = work of **11** full time yearly employees
- 2009 (43,635 hrs) saved = work of **21** full time yearly employees



The chart above illustrates the amount of savings reported by the Department attorneys in litigative and discovery related expenses versus the amount expended to fund ADR neutrals. From FY 2006 to FY 2008, Department attorney's indicated a savings of \$35,560,684 as compared to the \$5,551,103 spent by Department to fund ADR neutrals.

In FY 2006, Department attorneys reported an estimated savings of \$23,231,647 in litigation and/or discovery costs through the use of ADR. In addition, Department attorneys reported an estimated 39,467 hours of attorney and staff time were saved by participating in ADR processes. Moreover, Department attorneys reported 611 months were saved in litigation and/or discovery time after participating in ADR processes.

In FY 2007, Department attorneys reported an estimated savings of \$3,001,000 in litigation and discovery costs to the Department. In addition, Department attorneys reported an estimated 22,377 hours of staff time was saved by participating in ADR processes and Department attorneys reported that 429 months were saved in litigation and/or discovery time because they participated in ADR rather than litigation.

In FY 2008, Department attorneys reported an estimated savings of \$3,387,750 in litigation and discovery costs to the Department. In addition, Department attorneys reported an estimated 23,010 hours of staff time was saved by participating in ADR processes and Department attorneys reported that 661 months were saved in litigation and/or discovery time because they participated in ADR rather than litigation.

In FY 2009, Department attorneys reported an estimated savings of \$5,940,287 in litigation and discovery costs to the Department. In addition, Department attorneys reported an estimated 43,635 hours of staff time was saved by participating in ADR processes and Department attorneys reported that 849 months were saved in litigation and/or discovery time because they participated in ADR rather than litigation.

Mediation Success Stories

- In an environmental enforcement case, mediation saved \$1,000,000 in litigation/discovery expenses, saved 4,000 hours of attorney/staff time and 18 months of litigation/discovery time, yielded a better settlement than was likely without the use of mediation, and avoided adverse precedent.
- In an environmental defense case, mediation saved \$150,000 in litigation/discovery expenses, saved 2,500 hours of attorney/staff time and at least six months of litigation/ discovery time, produced a better settlement than likely without ADR, and avoided adverse precedent.
- In nine tort cases, mediation achieved a better settlement than was likely without ADR, saved \$1,540,000 in litigation/discovery expenses, saved 2,240 hours of attorney/staff time and 31 months of litigation/discovery time.
- In a discrimination/sexual harassment case, mediation saved 780 hours of attorney time and six months of litigation/discovery time, and resulted in a better settlement than would have been likely without ADR. In an employment discrimination case, the mediator's objective assessment of the plaintiff's claims prevented the government from having to engage in full discovery and summary judgment briefing in a non-meritorious case.
- In a disability rights case, mediation saved 2,000 hours of attorney time and eight months of litigation/discovery time, resulted in a better settlement than would have been likely without ADR, and altered the conduct giving rise to the dispute.
- In two tax cases, mediation saved 20 months of discovery/litigation time and produced a better settlement than would have been likely without ADR. In a First Amendment case, mediation saved up to 12 months of litigation/discovery time, and avoided adverse precedent.

Mediation Success Stories

- Mediation saved 900 hours of attorney and staff time in a Fair Housing Act discrimination case.
- Mediation saved \$350,000 in litigation and discovery expenses, and nine months of litigation and discovery time, and avoided adverse precedent in a discrimination case.
- In a major civil fraud accounting case, the government recovered \$62 million through the use of mediation and saved four months of trial preparation. In another civil fraud case, use of ADR saved 2,000 hours of discovery time, resolved the case two years sooner than would have been the case in litigation, and prevented other future similar disputes.
- In yet another civil fraud case, mediation saved \$500,000 in litigation and discovery expenses, the time of two full-time employees for 18 months, and 18 months in litigation and discovery time, and it altered the conduct giving rise to the dispute.
- Mediation also saved 1,000 hours of attorney time and improved the relationship between the parties in a condemnation of water rights action. In that same case, attorneys reported that ADR resulted in a more favorable settlement than if ADR had not been employed.
- Mediation in a Federal Tort Claims Act case avoided a potential loss of over \$6 million and saved 480 hours of attorney and staff time.

Settlement gives the Department and the United States Government significant savings in the costs and delay of litigation and discovery, as well as the monies paid to resolve the dispute. The saved resources can be used to handle other matters that cannot or should not settle. ADR allows the parties to negotiate a creative disposition that best serves their interests and which may go beyond the authority of a court to order. ADR fosters solutions that may substitute for the payment of money or reduce potential monetary exposure. Even where the case does not settle, ADR can be valuable in narrowing the issues, or helping the parties move closer to settlement (or facilitate a later settlement) by demonstrating good faith, improving the parties' relations, or making progress in the negotiations. ADR may be beneficial in resolving several related disputes in one global settlement, or in settling one dispute that can set parameters for the resolution of similar future disputes. ADR can contribute to effective case management by resolving discovery disputes or facilitating the informal exchange of critical information.

For example, regardless of whether the case was resolved or not Department attorneys who participated in ADR reported benefits of the process still reported benefits.

- In FY 2006, 75% of the Department attorneys who participated in ADR reported benefits of the process.
- In FY 2007, 86% of the Department attorneys who participated in ADR reported benefits of the process.
- In FY 2008, 89% of the Department attorneys who participated in ADR reported benefits of the process.
- In FY 2009, 83% of the Department attorneys who participated in ADR reported benefits of the process.

ADR Headlines

Fiscal Year 2008

Hercules, Inc., a former defense contractor, agreed to pay the United States nearly \$13 million toward the cleanup of the Allegany Ballistics Laboratory (ABL) site in Rocket Center, West Virginia, according to a settlement reached with the Department of Justice, the Department of the Navy, and the U.S. Environmental Protection Agency (EPA) on October 31, 2007.

The agreement, lodged on October 31, 2007, in the U.S. District Court for the Northern District of West Virginia, provides that Hercules, which operated the Navy-owned ABL site from 1945 to 1995, will pay a substantial portion of the costs needed to clean up the site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The money recovered by the Navy from Hercules will largely go toward further environmental cleanups on Navy-owned land.

This is the first settlement in which the Justice Department has recovered environmental cleanup costs from a contractor on behalf of the Navy.

Fiscal Year 2009

Pratt & Whitney and its subcontractor, PCC Airfoils LLC agreed to pay the United States \$53,325,000 to resolve False Claim Act allegations that Pratt & Whitney knowingly sold defective turbine blade replacements for jet engines used in military aircraft. The engines power the large fleet of twin engines and single engine F-16 fighter aircraft used primarily by the U.S. Air Force.

Under the settlement, Pratt & Whitney will pay \$45.5 million and will also provide \$4.825 million in services for re-inspecting potentially serviceable blades bought by the Air Force. PCC will pay \$2 million. Both companies previously provided corrective actions to Air Force which the government valued at \$47.1 million.

Strategies to Achieve FY 2010/2011 Goal: ODR will continue aiming for use and resolution rates that are high but recognizes that despite fluctuations, use of ADR will continue to bring significant savings and benefits to the Department and the United States Government.

ODR will continue its efforts to better evaluate use and results of ADR by obtaining more comprehensive reporting from the components. ODR joined in the Department case management project to focus on improving reporting. The new Department-wide Litigation Case Management System includes a centralized application and database for case management. In order to provide consistency and usability for all components,

ODR requested that the litigation architecture include tracking of dispute resolution. ODR will also explore the possibility of requiring the components that utilize ADR to report annually on the number of cases in which ADR was used and the total cost and resource savings realized through use of ADR.

ODR continues to find new and innovation ways to improve upon the collection of data from Department attorneys and Assistant United States Attorneys who participate in ADR processes. For example, in FY 2007, ODR revised an online ADR evaluation form that Department attorneys can complete for every case. The form is now fully automated which allows ODR to extract data quickly and more efficiently. This revision also creates mandatory fields which will encourage more detail in the responses submitted by Department attorneys.

ODR redesigned its internal Department web page that provides practical guidance-at-a-glance and resources for Department attorneys on the use and benefits of ADR. ODR anticipates that new and approved online resources will continue to promote the use of ADR within the Department and, thus, strives to keep these resources as fresh and technologically savvy while retaining their use-friendly appeal.

ODR continues to identify and develop better ways of storing and tracking ADR data. Beginning in FY 2007, ODR began to map data, build conversion tools, migrate data, and correct discrepancies into a system of data collection. By the end of FY 2008, ODR had developed, designed, and implemented a document storage and tracking database and, as a result, vastly improved its statistical analysis capabilities and resource management. In the past ODR tracked funding requests and data from evaluations in a static manner by using spreadsheets. In FY 2008, ODR completed the extraction of data from its ADR records and created a variety of field levels in an electronic database. ODR is now able to write reports, sort and sub sort data, and manage information in rapid and precise manner. This project continued in FY 2009 to require the effort and attention of existing government employees as well as the specialized expertise and supplemental labor of industry consultants and/or contractor resources to create and maintain a fully functioning data storage and tracking system. From FY 2010 and onward, the effort and attention of existing government employees will be required to maintain the data storage and tracking system and make upgrades and changes to the system, as needed.

3.4 Outcome Measure 2: Percentage of cases resolved using court-ordered ADR

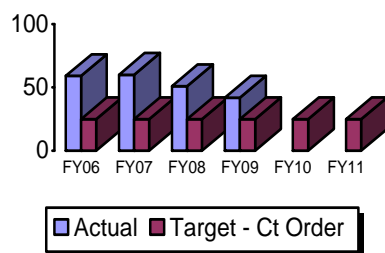
a. Performance Plan & Reported Outcomes

In support of its goal to evaluate the use of ADR at the Department, ODR has evaluated the use, cost effectiveness and results of ODR funded ADR at the Department. In the past, and through and including FY 2005, ODR's outcome measure was the overall percentage of cases resolved using ADR. Beginning in FY 2006, ODR has two outcome measures: one measuring the percentage of cases resolved using *voluntary* ADR, and the other measuring the percentage of cases resolved using *court-ordered* ADR.

- In FY 2006, the percentage of cases resolved using court ordered ADR was 59%.
- In FY 2007, the percentage of cases resolved using court-ordered ADR was 60%.
- In FY 2008, the percentage of cases resolved using court-ordered ADR was 51%.
- In FY 2009, the percentage of cases resolved using court-ordered ADR was 42%.

Discussion: The resolution rates fluctuate from year to year, and data cannot definitively explain the fluctuations. This is because the resolution rate of ADR in Department cases depends on factors that are inherently unpredictable and uncontrollable, e.g., number and types of affirmative and defensive litigation cases begun in the components, number and types of cases ordered into ADR by the courts, appropriateness of individual cases for ADR, likelihood that individual cases may/may not be settled, and ability and willingness of DOJ clients and opposing counsel to settle a case. ODR's future targets are based on success in meeting past targets, but that is necessarily an imprecise and uncontrollable goal.

Figure 7: Percentage of Court Ordered Cases Resolved Per Fiscal Year



Data Collection and Storage: The primary source of data collection for tabulating the Department's use of ADR is component reporting. The primary source of case outcomes is attorney evaluations.

Data Validation and Verification: Each litigating component is responsible for tracking attorney usage of ADR and forwarding this information to the Office of Dispute Resolution. The Office of Dispute Resolution gathers outcome information from attorneys.

Data Limitations: The individual components are responsible for ensuring compliance with their local procedures for maintaining the integrity of their data collection systems.

The figures are based on manual records of attorney evaluations of ADR results in individual cases, submitted mostly in those cases in which attorneys procured the services of the neutral through payment from the ODR fund administered by ODR. These evaluations are a fragmentary picture of results in the Department and consequently the use and benefits of ADR are believed to be underreported.

Resolution of cases through ADR offers important benefits in the Department's enforcement and defensive litigation. Settlement gives the Department and the United States Government significant savings in the costs and delay of litigation and discovery, as well as the monies paid to resolve the dispute. The saved resources can be used to handle other matters that cannot or should not settle. ADR allows the parties to negotiate a creative disposition that best serves their interests and which may go beyond the jurisdiction of a court to order. ADR fosters solutions that may substitute for the payment of money or reduce potential monetary exposure. Even where the case does not settle, ADR can be valuable in narrowing the issues, or helping the parties move closer to settlement (or facilitate a later settlement) by demonstrating good faith, improving their relations, or making progress in the negotiations. ADR may be beneficial in resolving several related disputes in one global settlement, or in settling one dispute that can set parameters for the resolution of similar future disputes. ADR can contribute to effective case management by resolving discovery disputes or facilitating the informal exchange of critical information.

FY 2006 Performance Actual: 59%

FY 2007 Performance Actual: 60%

FY 2008 Performance Actual: 51%

FY 2009 Performance Actual: 42%

FY 2010 Performance Target: 25%

FY 2011 Performance Target: 25%

b. Strategies to Accomplish Outcomes

Strategies to Achieve FY 2010/2011 Goal: ODR will continue aiming for use and resolution rates that are high but recognizes that despite fluctuations, use of ADR will continue to bring significant savings and benefits to the Department and the United States Government.

ODR will continue its efforts to better evaluate use and results of ADR by obtaining more comprehensive reporting from the components. ODR joined in the Department case management project to focus on improving reporting. The new Department-wide Litigation Case Management System includes a centralized application and database for case management, in order to provide consistency and usability for all components. ODR requested that the litigation architecture include tracking of dispute resolution. ODR will also explore the possibility of requiring the components that utilize ADR to report annually on the number of cases in which ADR was used and the total cost and resource savings realized through use of ADR.

ODR created a new online ADR evaluation form that Department attorneys can complete for every case in which ADR was used and, beginning in FY 2006, the attorneys have been able to submit the completed evaluation form electronically to ODR. ODR has also established an internal Department web page that provides practical guidance-at-a-glance for Department attorneys on the use and benefits of ADR. The ADR evaluation form is on the Department's internal web page.

V. E-GOV Initiatives

Not applicable for this submission.

VI. Program Offsets by Item

The Department is continually evaluating its programs and operations with the goal of achieving across-the board economies of scale that result in increased efficiencies and savings. In FY 2011, DOJ is focusing on travel as an area in which savings can be achieved. For ODR, travel or other management efficiencies will result in offsets of \$1,000. This offset will be applied in a manner that will allow the continuation of effective law enforcement program efforts in support of Presidential and Departmental goals, while minimizing the risk of health, welfare and safety of agency personnel.

VII. Exhibits

See attached.